

QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT BILL 1997

EXPLANATORY NOTES

SHORT TITLE

Queensland Building Services Authority Amendment Bill 1997

GENERAL OUTLINE

Objective of the Legislation

The objective of the legislation is to amend the *Queensland Building Services Authority Act 1991* to validate licences issued, since 1 July 1992, to applicants who did not meet requisite criteria but who demonstrated alternative experience and/or qualifications or completed an assessment certifying competency.

Reasons for the Bill

Three decisions of the Queensland Building Tribunal (the Tribunal) in 1997 have held invalid transitional licences issued by the Queensland Building Services Authority (the Authority) after the repeal of provisions affording the Authority with discretion in the assessment of licence applications. The practical effect of the decisions is to cast doubt on the validity of all licences issued by the Authority in certain circumstances. These circumstances are where the applicant did not meet criteria set out in the Regulations but the Authority issued a licence based on acceptable alternative experience, qualifications or certifications of competency.

The invalidity of the licences potentially impacts negatively on all industry stakeholders. Validation of the licences is essential to secure:

- access by consumers to assistance and remedies (including claims against the Statutory Insurance Scheme) available under

the *Queensland Building Services Authority Act 1991*;

- the validation of assistance (such as the payment of insurance claims) previously provided to consumers under the *Queensland Building Services Authority Act 1991*; and
- the payment of full contract prices for contractors carrying out work under the affected licences.

ACHIEVEMENT OF POLICY OBJECTIVES

The legislation will retrospectively validate licences issued after the introduction of the *Queensland Building Services Authority Regulation* (the Regulations) on 1 July 1992. Such action will avert the potential negative impact on industry stakeholders arising from the invalidity of licences.

The provisions of the Regulations in force until 19 November 1993 affording the Authority discretion in the assessment of licence applications may be sufficient to validate all licences issued between 1 July 1992 and 19 November 1993. However, it is proposed to validate all licences issued since 1 July 1992 to secure, beyond doubt, the validity of the licences issued in circumstances where alternative experience, qualifications or competency assessments were accepted as an alternative to satisfying requisite licensing criteria.

ALTERNATIVES FOR ACHIEVING POLICY OBJECTIVES

There are no acceptable alternatives available which will achieve the legislation's policy objectives.

ASSESSMENT OF ADMINISTRATIVE COST TO GOVERNMENT

The Authority is entirely self-funded, its principal source of income being derived from annual licence renewal fees. Minimal costs associated with the introduction of the legislation will be borne by the Authority. There are no administrative costs to Government associated with the introduction of the legislation.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The retrospective validation of licences is generally inconsistent with fundamental legislative principles due to its potential impact on actions by consumers against the Authority for damages for loss suffered under a contract with a licensee who did not meet requisite licensing criteria. However, the impact is expected to be limited to a very small number of consumers. The proposal does not impact on the rights of consumers to seek redress from the contractor responsible for the loss. The impact is minimal when compared to the substantial negative implications for all industry stakeholders which are certain to occur if retrospective validation is not effected.

EXTENT OF CONSULTATION

The Department of the Premier and Cabinet, Treasury Department (including the NCP Unit), the Department of Justice including the Office of the Crown Solicitor and the Office of the Parliamentary Counsel and the Department of Tourism, Small Business and Industry have been consulted in relation to the legislation. The agencies identified no significant concerns with the legislation.

The Queensland Building Services Board, comprising industry, consumer and insurance representatives, has endorsed the proposed strategy with regard to Transitional Licences. The three peak industry associations (the Housing Industry Association, the Queensland Master Builders' Association and the Building Industry Specialist Contractors Organization of Queensland Inc.) have also indicated support for the proposed legislation.

NOTES ON PROVISIONS

Clause 1

- sets out the short title.

Clause 2

- provides that the principal Act to be amended is the *Queensland Building Services Authority Act 1991*.

Clause 3 (1)

- replaces the heading for the Schedule which relates to transitional

provisions.

Clause 3 (2)

- replaces the word “clause” in the existing schedule with the word “section”.

Clause 3 (3)

- replaces the word “subclause” in the existing Schedule with the word “subsection”.

Clause 3 (4)

- replaces the term “section 101” in the existing Schedule with the term “section 101 of this Act”.

Clause 3 (5)

- inserts a new Part 2 under the Schedule specifically relating to Validating Provisions. It is divided into five (5) sections (numbered eight to twelve (8-12)) as follows:

Section 8—Definitions

The subdivision establishes definitions for terms referred to in the Bill. This includes the definition of the types of licences that will be affected or validated by the operative provisions (affected licence, transitional licence).

Section 9—Validation of affected licences

This section validates all licences issued in circumstances where the applicant did not have the qualifications and experience required by Regulation for the relevant class of licence. The section confirms that the licence is taken to be validly issued only until such time as it was suspended, cancelled or surrendered, if any of those actions have occurred. The section thereby confirms the validity of action taken by the Queensland Building Services Authority or the licensee in suspending, cancelling or surrendering the licence.

Section 10—Period of effect of transitional licences—compliance period ended

This section applies to transitional licences where the stated compliance

period ended prior to the commencement of the amending Bill. The section provides that where the affected licensee has not met requisite licensing criteria within the stated compliance period, the licence is validated from the issue of the licence until the expiry of a period of three (3) months from the commencement of the amendment Bill or until the completion of contracts entered into prior to the commencement of the amendment Bill, whichever is the later.

Section 11—Period of effect of transitional licences—compliance period current

This section is distinguished from the preceding section on the basis that the period allowed for the licensee to meet requisite licensing criteria has not yet expired. The section provides that in these circumstances, the licence will be validated until the expiry of the compliance period, for a period of three (3) months from the commencement of the Amendment Bill, or until the completion of contracts entered into prior to the commencement of the Amendment Bill, whichever is the later.

Section 12—Condition of Transitional Licences

This section provides that transitional licences validated under sections ten (10) and eleven (11) are subject to a condition that the holder may enter into no new contracts under the licence during the period of validation. The section requires that the Queensland Building Services Authority promptly notify all relevant licensees of this condition.